

TRUMAN AND VELMA CROSS

IBLA 77-61

Decided February 7, 1977

Appeal from a decision of the District Manager, Prineville District, Bureau of Land Management, Oregon, setting a date by which a number of appellants' horses must be removed from the public domain.

Affirmed.

1. Act of December 15, 1971--Grazing Leases: Generally-- Wild Free-Roaming Horses and Burros Act

One who has laid claim, pursuant to the Wild Free-Roaming Horses Act, to horses on the public lands and who does not remove them within a reasonable period, is subject to having the renewal of his grazing lease denied.

Appearances: Roy Kilpatrick, Esq., Mt. Vernon, Oregon, for appellants.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Truman and Velma Cross have appealed from a decision dated October 15, 1976, of the Prineville, Oregon, District Manager, Bureau of Land Management, which allowed them until January 4, 1977, to remove certain trespassing horses from the public lands upon penalty of a denial of a renewal of their grazing lease.

In November 1973 the appellants made a claim of ownership to 91 head of horses pursuant to the Wild Free Horse and Burros Act of December 15, 1971, 16 U.S.C. §§ 1331-1340 (Supp. IV 1974). 1/

1/ Amended by Federal Land Policy and Management Act of 1976 § 404, PL 94-579, October 21, 1976. (16 U.S.C. § 1338a; 90 Stat. 2775.)

After the claim was acknowledged in the spring of 1974, the area, including that in which appellants' horses range, was closed to the grazing of horses and burros, pursuant to 43 CFR 4712.1-4. On October 7, 1974, after some prior discussions to give them time to get ready, the Crosses were issued an authorization to gather the claimed horses effective for the period October 10, 1974, to June 30, 1975. At their request the permit was extended several times to September 30, 1976. During this period the District Office had repeatedly urged appellants to complete the gathering. Upon the expiration of the gathering permit, the District Office issued a decision dated October 1, 1976, calling upon the Crosses to show cause why their lease should not be cancelled for violation of the lease terms by use in excess of that authorized and in unauthorized areas and the notice of closure. 43 CFR 4125.1-1(h), 4112.3-1(b), 9239.3-1(b). Appellants filed a response offering reasons for their delay and asking for more time. In his decision, the District Manager found these contentions unpersuasive and insufficient to allow continued range abuse. However, he allowed appellants until January 4, 1977, to remove their remaining horses; otherwise, he informed them their grazing lease would not be renewed. (It appears that the lease was renewable as of January 1, 1977.)

In their appeal appellants contend that the time allowed is unreasonably short and the area involved is 100 square miles of intermingled private and public lands, of rough terrain with only a few poor roads and practically no fences. They also assert the rules and regulations of the Wild Free Roaming Horse and Burro Act hinder them.

We find these reasons unpersuasive. As the District Manager pointed out, the appellants have had 2 1/2 years to remove their horses, but they have captured only 20 of the 91; others have gathered their horses in similar areas in less time; the range is being abused, and the time allowed has been adequate. We agree.

Accordingly, appellants' request for an extension of time to gather their horses is denied. We do not, of course, pass upon the issue of whether appellants' lease is to be denied renewal. If the District Manager intends to take that step, future proceedings will be governed by the provisions of 43 CFR 4123.1.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Prineville, Oregon, District Manager, Bureau of Land Management, is affirmed.

Martin Ritvo

Administrative Judge

We concur:

Joseph W. Goss
Administrative Judge

Frederick Fishman
Administrative Judge

